

years, finding the following were aggravating circumstances: Cox's prior felony convictions, the effect of the offense on the victim, the presence of an accomplice, and the commission of the offense for pecuniary gain. Cox sought post-conviction relief pursuant to Rule 32.1, Ariz. R. Crim. P., claiming his trial counsel had been ineffective; there was an insufficient factual basis for the plea; and his plea was not knowing, voluntary, and intelligent. After a three-day evidentiary hearing, the court denied relief, and this petition for review followed. Absent a clear abuse of discretion, we will not disturb a trial court's ruling on a petition for post-conviction relief. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Cox contends on review that the trial court abused its discretion in denying relief. He asserts trial counsel was ineffective because he failed to file certain pretrial motions and interview witnesses and did not apprise Cox adequately about the strength of the state's case. Cox argues, as he did below, that he only admitted he had acted with reckless rather than extreme indifference to human life; therefore, there was an insufficient factual basis to support the guilty plea to the offense of second-degree murder. *See* A.R.S. § 13-1104. He contends the factual basis for his plea could only have supported a guilty plea to manslaughter. *See* A.R.S. § 13-1103. Cox also reasserts his plea was not knowing, voluntary, and intelligent because of counsel's deficiencies and that he would not have entered the plea had he been given the right information. And he contends, because counsel's testimony at the evidentiary hearing shows he did not understand the difference between the two offenses, counsel could not have conveyed that distinction adequately to him.

¶3 In order to be entitled to post-conviction relief based on a claim of ineffective assistance of counsel, a defendant must establish counsel's performance was deficient in that it fell below prevailing professional norms and that this deficient performance was prejudicial. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985). By entering a guilty plea, a defendant waives all nonjurisdictional defects, including all claims of ineffective assistance of counsel, except those that relate directly to the validity of the plea. *See State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). Therefore, Cox waived the claims that counsel was ineffective for failing to file pretrial motions. *See id.*

¶4 In any event, with respect to the trial court's ruling on these and Cox's other claims, including other claims of ineffective assistance and the other challenges to the validity of the plea, Cox has not sustained his burden of establishing the court abused its discretion in denying relief. Cox did not prove the allegations of his petition for post-conviction relief by a preponderance of the evidence. *See Ariz. R. Crim. P. 32.8(c)*. In its minute entry denying relief after the evidentiary hearing, the court clearly identified and thoroughly addressed Cox's claims and resolved them in a manner sufficient to permit this or any other court to conduct a meaningful review. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). No purpose would be served by rehashing the court's ruling here. *See id.* Based on the record before us, the applicable law, and the court's assessment of the testimony presented at the evidentiary hearing, the court resolved the claims correctly, and we therefore adopt its order. *See id.*

¶5 With respect to the factual findings the trial court made based on the testimony presented at the evidentiary hearing, we defer to those findings unless they are clearly erroneous. *See State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993). Additionally, we are mindful that the court is the sole arbiter of witness credibility in post-conviction proceedings. *See State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988). And, it is for the trial court, not this court, to resolve any factual disputes underlying an ineffective assistance of counsel claim. *See State v. Herrera*, 183 Ariz. 642, 646, 905 P.2d 1377, 1381 (App. 1995). There was ample evidence to support the court’s order and the factual findings in that order, particularly the testimony of Christopher Kimminau, who represented Cox after Richard Parrish was permitted to withdraw.

¶6 Kimminau testified that, although he was prepared to take the case to trial, Cox told him repeatedly that he wanted “a plea” offer.¹ And, Kimminau stated that Cox specifically had requested he be given an opportunity to plead guilty to second-degree murder. Kimminau testified he and Cox had discussed the case extensively, including the nature of the offenses of which he could be convicted, his sentencing exposure, the strength of the state’s case, and the anticipated evidence. Cox told Kimminau he did not want Kimminau to interview any witnesses and provided Kimminau with a significant amount of

¹We note that Kimminau’s testimony is consistent with his representation to the court at sentencing that Cox had wanted to enter a plea from the moment Kimminau first represented him and was willing to plead guilty to second-degree murder. Kimminau argued that this reflected Cox’s willingness to accept responsibility for what had occurred, which Kimminau urged the court to consider as a mitigating circumstance. The prosecutor noted this during his cross-examination of Cox at the evidentiary hearing, pointing out to Cox, who claimed he had not wanted to enter a plea, that he had never corrected counsel or denied that he wanted to enter the plea rather than go to trial.

information about the witnesses. Kimminau characterized Cox as “very well-versed” about the case and his exposure. He denied that Cox had ever told him he needed to conduct additional interviews of witnesses, including James Lacey or Chad Harrison. Kimminau felt he had acquired sufficient information, including witness statements, to evaluate the case and make a sound recommendation about the plea agreement that the state had offered. Kimminau testified further that he had seen no need to file any pretrial motion in order to evaluate the plea agreement.

¶7 There were many conflicts between Kimminau’s testimony and Cox’s testimony. But it was for the trial court to resolve those conflicts in the evidence, and it did so in favor of the state. *See Herrera*, 183 Ariz. at 646, 905 P.2d at 1381. We will not interfere with the court’s exercise of its discretion in this context. There was ample evidence to support the court’s order.

¶8 For the reasons stated, we grant the petition for review but deny relief.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

GARYE L. VÁSQUEZ, Judge